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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,490	03/10/2004	Virgil E. Stanley III	4486-096	5656

24112 7590 05/09/2006

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EXAMINER	
AUSTIN, AARON	
ART UNIT	**PAPER NUMBER**
1775	

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/797,490	STANLEY, VIRGIL E.	
	Examiner	Art Unit	
	Aaron S. Austin	1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 October 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5-10,12,13 and 15-29* is/are pending in the application.

4a) Of the above claim(s) *10,12,13,15-17 and 27-29* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,5-9,and 18-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *04 October 2004 and 10 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1, 5-9, and 18-26, drawn to an artificial tree, classified in class 428, subclass 18.

II. Claims 10, 12, 13, 15-17, and 27-29, drawn to a method of generating a fragrance, classified in class 239, subclass 8.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process such as a process including creating the air-fragrance mixture in the trunk.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Larry Coats on April 24, 2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1, 5-9, and 18-26. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10, 12, 13, 15-17, and 27-29 are withdrawn from further

consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because it improperly identifies the application as being filed separately rather than as attached to the filing of the application as was the case.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 7-9, and 18, 19, 22, 23, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bigman (U.S. Patent No. 6,696,116) in view of Davis et al. (U.S. Patent No. 5,455,750).

Bigman teaches a device and method for flowing pellets that may, for example, simulate snowfall on a tree (abstract and column 2, lines 1-4). The device includes a hollow trunk, branches extending from the trunk, pellets/blocks held in a container

associated with the tree, and a blower/fan configured to generate upward movement of the pellets through at least a portion of the trunk to an outlet (column 2, lines 27-65).

Bigman does not teach the pellets as having a fragrance.

Davis et al. teach an artificial holiday tree incorporating a scent-producing element therein in the form of scent producing pellets or potpourri (column 5, line 35). Therefore, as it is clearly taught by Davis et al. that scent producing pellets associated with a tree may provide the benefit of desirable scents associated with the tree or a holiday such as Christmas, it would have been obvious to one of ordinary skill in the art at the time of the present invention to use scent producing pellets as the pellets taught by Bigman. Thus the claimed invention as a whole is *prima facie* obvious over the combined teachings of the prior art.

Claims 5, 6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bigman (U.S. Patent No. 6,696,116) in view of Davis et al. (U.S. Patent No. 5,455,750), and further in view of Zins (U.S. Patent no. 5,517,390).

Bigman teaches a device and method for flowing pellets as described above.

Davis et al. teach an artificial holiday tree incorporating a scent-producing element as described above.

Neither Bigman nor Davis et al. teach the fan being disposed within the trunk.

Zins teaches a fan disposed within the trunk of an artificial tree used to cool the interior of the main trunk by circulating air therein (column 4, lines 49-52). Therefore, as it is clearly taught by Zins that placement of a fan within the trunk of an artificial tree

provides the benefit of blowing air within the trunk, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to position the blower/fan in the device taught by Bigman and Davis et al. to place the blower/fan in the trunk to provide the necessary flow of air within the trunk. Thus the claimed invention as a whole is *prima facie* obvious over the combined teachings of the prior art.

Claims 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bigman (U.S. Patent No. 6,696,116) in view of Davis et al. (U.S. Patent No. 5,455,750), and further in view of Hashino (JP 405306833 A).

Bigman teaches a device and method for flowing pellets as described above.

Davis et al. teach an artificial holiday tree incorporating a scent-producing element as described above.

Neither Bigman nor Davis et al. teach passage of blown air through at least a portion of the hollow trunk and out the trunk and branches.

Hashino teaches an air conditioning device formed in the shape of a tree wherein heated or cooled air is passed through the trunk and out of the trunk and branches (Fig. 1). Therefore, as Hashino clearly teaches passage of air through the trunk and out a plurality of openings in the branches of an artificial tree provides the advantage of balancing the exit of air around the tree, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to pass the air-pellet mixture of Bigman and Davis et al. through the trunk and out the branches.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron S. Austin whose telephone number is (571) 272-8935. The examiner can normally be reached on Monday-Friday: 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ASA

JENNIFER C. MCNEIL
SUPERVISORY PATENT EXAMINER
4/28/06